

# Program Evaluation Report

## New York's Base Drinking Water State Revolving Fund Program for FFY 2011

10/23/2012

U.S. EPA Region 2

Prepared by the State Revolving Fund Program Section



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## **I. Introduction**

The Drinking Water State Revolving Fund (DWSRF) Base Program was authorized by the Safe Drinking Water Act (SDWA) of 1996 to provide capitalization grants to States and the Commonwealth of Puerto Rico to finance the costs of infrastructure projects needed to achieve or maintain compliance with SDWA requirements. In addition to financing infrastructure projects, States are authorized to set aside a portion of their capitalization grant to fund a range of activities including program administration, source water protection and capacity development. Each State has considerable flexibility in determining the design of its program and in directing funding towards its most pressing compliance and public health needs; however, this flexibility must always be conducted within the SDWA and the framework of underlying program requirements.

The U.S. Environmental Protection Agency (EPA) Region 2 continual oversight of the DWSRF programs assesses each State's performance and ensures compliance with the statutes, regulations, operating agreement (OA), and the grant conditions governing DWSRF programs. The oversight is accomplished via a continuous process of review and evaluation of key program elements. The review process includes a thorough examination of project files and program elements during on-site reviews conducted at state offices. The review process includes meetings and interviews with state program officials.

This Program Evaluation Report (PER) summarizes the results of Region 2's 2012 on-site reviews, conducted on May 8th through 9th, 2012, which evaluated New York's Base program activities during FFY 2011.

## **II. Program Background**

The New York State Drinking Water State Revolving Fund Base program is jointly administered by the New York State Department of Health (NYSDOH) and the New York State Environmental Facilities Corporation (NYSEFC). NYSDOH is the DWSRF EPA grant recipient and oversees the technical aspects of the program, while NYSEFC administers the financial operations of the program. Through this partnership, below market-rate financing, including grants to disadvantaged communities, are offered to assist recipients (local governments and private water utility companies) for the construction of drinking water infrastructure projects. Since its inception in 1996, the NY-DWSRF program has executed over \$3.6 billion in financings including more than \$285 million in grants to disadvantaged communities.

From its inception in 1996, through September 30, 2011, New York's DWSRF Base program has executed \$3,110,162,844 in financial assistance to eligible assistance. This amount includes \$851,142,147 in assistance to disadvantaged communities.

The Base DWSRF program requires the State to provide a 20% match of the Federal capitalization grant amount. The Federal and State funds are leveraged, which enables the State to provide assistance to more projects. Leveraging has proved to be a powerful tool for New York, resulting in funds disbursed for project assistance totaling 351% (\$3,110,162,844) of the cumulative Federal capitalization grant amounts (\$887,024,300) as of September 30, 2011. The needs of New York's drinking water systems eclipse those of most other states. In EPA's Drinking Water Survey and Assessment – Fourth Report to Congress dated February 2009, it was estimated that \$27 billion will be needed in New York to ensure the delivery of safe drinking water through 2029. The needs of New York are so great that even with available capital being leveraged three to one, a significant disparity exists between the projects requiring and seeking funding to those actually able to be funded.

In FFY 2009 there was a significant new initiative; the implementation of the American Recovery and Reinvestment Act (ARRA). ARRA was signed into law by President Barack Obama on February 17, 2009. ARRA provided \$2 billion in funding nationally to states to finance high priority (shovel-ready)

infrastructure projects that were needed to ensure safe drinking water and quickly create jobs. A few of the requirements introduced under ARRA were carried over into the Base Program:

- **Additional Subsidization:** A minimum of 30% of the funds must be used for additional subsidization in the form of principal forgiveness, negative interest loans, and/or grants.
- **Green Project Reserve (GPR):** A minimum of 20% of the capitalization grant must be used for green projects, including green infrastructure, energy efficiency, water efficiency, and/or environmentally innovative activities.
- **Davis Bacon (DB):** Projects must comply with DB labor and wages requirements.

As of the time of the review, NYSDOH has been meeting or exceeding the Additional Subsidization and GPR requirements. NYSDOH and NYSEFC have also been ensuring subrecipient compliance with Davis Bacon wage requirements.

### III. Scope

This PER is EPA's evaluation of the managerial, technical, financial and operational performance of New York's DWSRF Base Program during FFY 2011. This PER documents the results of the programmatic on-site review conducted on May 8th through 9th, 2012. As of September 2012, 24% of the 2011 grant fund had been outlaid.

## IV. Program Elements

### A. 2011 Intended Use Plan

The Intended Use Plan (IUP) is an annual utilization plan which describes goals, funding policies, and management of the DWSRF program. The IUP also describes program changes and initiatives, long and short-term goals, financial status, set-aside activities, the disadvantaged community program, capacity assessment, and the state environmental review process. The IUP also lists projects on a prioritized basis for both the current year and for multiple years. The final Intended Use Plan (IUP) for FFY 2011 was issued on October 1, 2010.

The project readiness lists contained in the IUP provide a summary of the projects that will be funded within the FFY. These include a Project Readiness List, a "Category A" list of projects serving less than 10,000 people, a "Category B" list of projects serving greater than 10,000 people, a Multi-Year list for projects that have had pre-application forms submitted and reviewed, and a "Category C" list of projects in disadvantaged communities. Project lists typically included a short description, project costs, description of financing, points received in ranking, and population served. New York State's IUP scores and ranks projects consistent with its approved priority system. Prior to ranking, the applicants are sorted by population size into lists as described above. This ensures that New York meets the 15% small system requirement. Within these lists NYSDOH awards the most points to systems that have the most significant compliance issues. Projects can receive special priority on the lists only in special conditions. If an emergency exists where there is an imminent danger to public health or the threat of unavailable sources of potable water for an extended period of time, these projects will receive the highest priority ranking. If a project has an executed loan agreement and it needs more funding for completion, it will receive significant bonus points. This ensures the completion of all projects.

### B. 2011 Capitalization Grant

The FFY 2011 capitalization grant for the DWSRF program in NYS was awarded on September 26, 2011 to the NYSDOH and is jointly administered with NYSEFC. A state receiving a DWSRF Base program grant is required to contribute a 20% match using state funds. Additionally, there is a required 1:1 match of the Program Management set aside. The table below lists the federal grant amounts, state match amounts, total funding amounts, funding for projects, funding for set-asides, and the number of financing agreements:

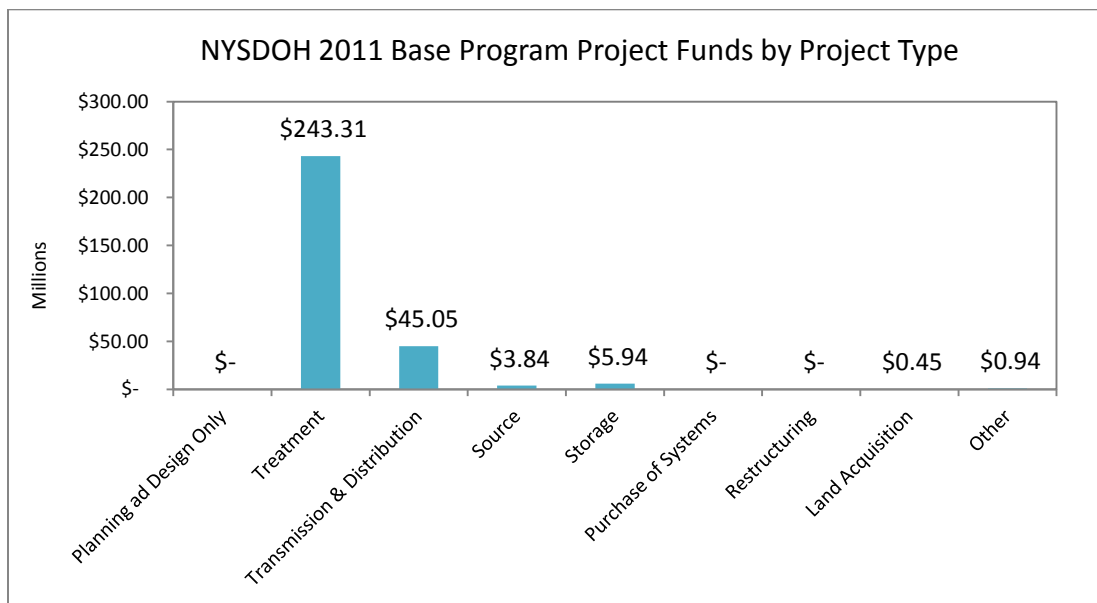
2011 Federal Grant Amount	2011 20% State Match	2011 1:1 Prog. Mgmt. Match	2011 Total Funding
\$62,055,000	\$12,411,000	\$5,373,808	\$79,839,808

The State provided a 20% matching share of \$12,411,000 as required by the DWSRF program. This totaled to a DWSRF FFY 2011 fund amount of \$79,839,808. A total of 16.5% of the total 2011 fund (grant plus state contribution) was reserved for set-asides with the remainder being used for projects:

Source	2011 Funding for Projects	2011 Funding for Set- Asides	2011 Total Funding
Federal:	\$53,017,232	\$9,037,768	\$62,055,000
State:	\$12,411,000	\$5,373,808	\$17,784,808
Total:	\$65,428,232 (82%)	\$14,411,576 (18%)	\$79,839,808 (100%)

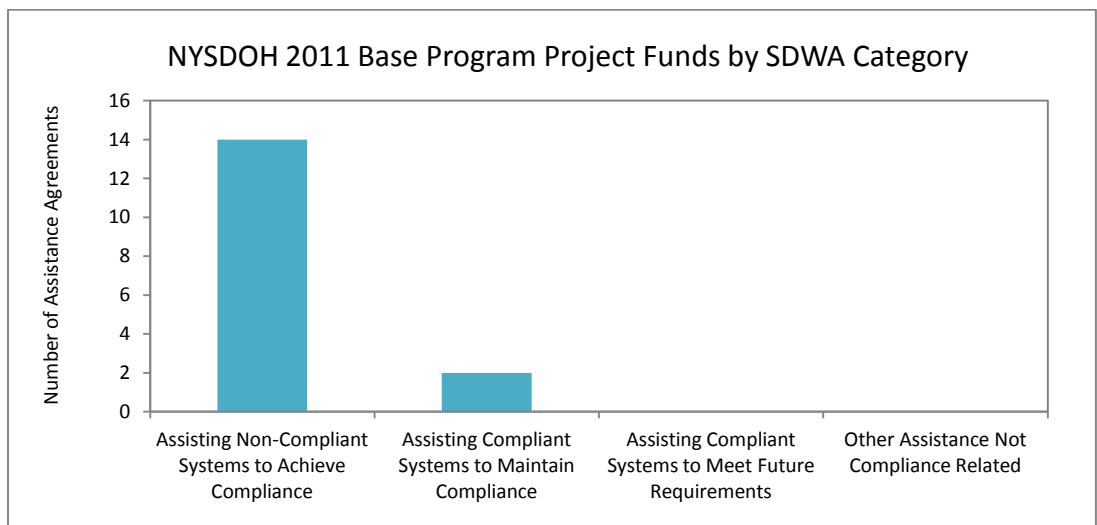
## 1. Projects

New York budgeted \$53,017,232 from its 2011 Federal Capitalization Grant for use towards financing construction projects across the state. The bar graph below shows the distribution of funds expended in 2011 across construction categories. These categories include planning and design, purchase of systems, restructuring, land acquisition and other. Land acquisition and the “other” category were the only use of non-construction funds. In total for 2011, \$299,536,575 was directed toward project use.



The bar graph demonstrates that most of the DWSRF funding is directed towards treatment and transmission & distribution projects. This indicates a tendency for these types of projects to appropriately receive more points during the project ranking process because they are normally related to higher public health priorities. This also indicates a priority for fix-it-first type projects.

As stated previously, priority is given to projects that are not in compliance with the regulatory standards of the Safe Drinking Water Act (SDWA). Funds are expended to restore these systems to a state of compliance. The graph below shows how spending is directed to projects in need of correction to restore or achieve present compliance:

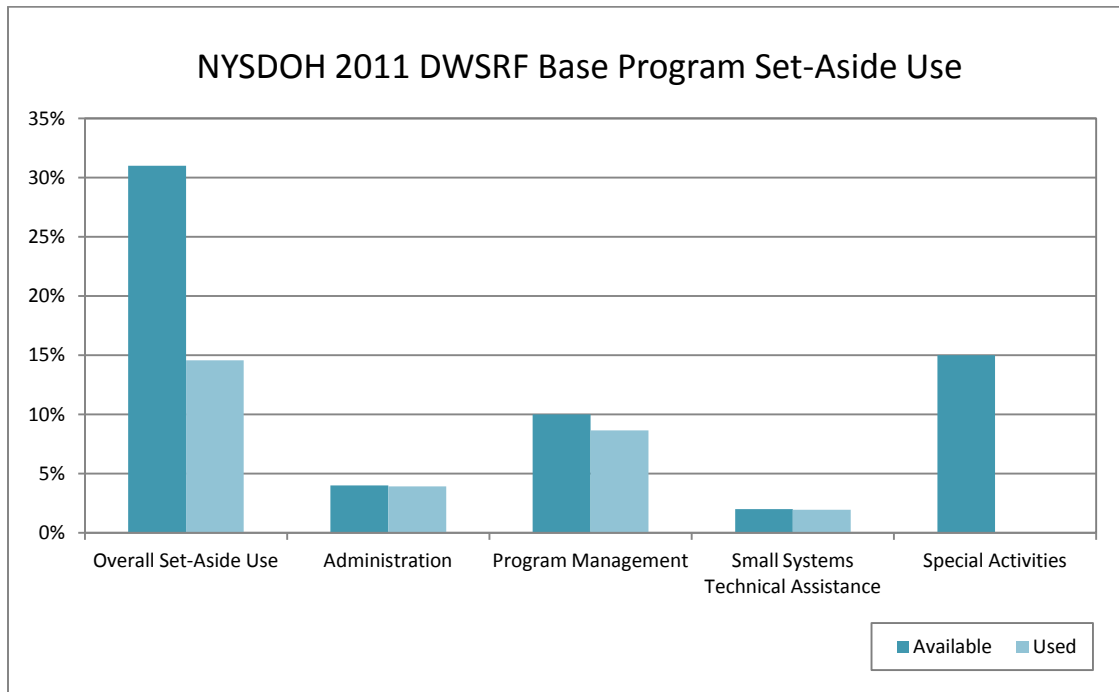


## 2. Set-Asides

New York used \$6,120,343 from the 2011 federal capitalization grant to fund state-managed set-asides. This included Administration, Small Systems Technical Assistance, and Program Management. The following table shows this distribution of set-aside funds:

2011 Total Grant Amount	2011 Federal Set-Aside Funding	Administration	Technical Assistance	Program Management
\$62,055,000	\$9,037,768	\$2,442,640	\$1,221,320	\$5,373,808

In relation to what set-asides are available to New York under the DWSRF program, the State is reserving the maximum amounts in all but one category. NYSDOH took nearly the full share of the 4% administrative funding set-aside, and 2% of the funding for Small Systems Technical Assistance set-aside. NYSDOH is using about 8.7% of the 10% program management set-aside. The state elected to not use any of the 15% set-aside for Special Programs. Overall New York used 14.6% of the available 31% that is allowed for set-aside use.





### 3. Special Requirements

NYSDOH complied fully with the new Green Project Reserve and Additional Subsidization Requirements. The table below shows the amount of funding NYSDOH directed towards the GPR and towards Additional Subsidization as compared with the minimum amounts required:

Requirement	Minimum	NYSDOH Actual <sup>1</sup>	Number of Projects
Green Project Reserve	20% of 2011 Grant (\$12,411,000)	20% of 2011 Grant (\$12,411,000)	1
Additional Subsidization	30% of 2011 Grant (\$18,616,500)	30% of 2011 Grant (\$18,661,290)	13+

As of the time of the writing of this report, the Green Project Reserve element has been satisfied. The New York City Croton Filtration Project was funded in excess of 20% of the capitalization grant money which alone meets the GPR requirement.

As for the additional subsidization element, NYSDOH has met the 30% requirement. As of the time of the writing of this report, NYSDOH has used grants to fund ten projects totaling \$18,661,290 or 30% of the 2011 grant.

A copy of New York State's EPA Project Benefit Report (PBR) is attached.

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<sup>1</sup> These are not final numbers from NYSDOH.

## **V. Programmatic Observations**

### **A. Operating Agreement**

The Operating Agreement (OA) and its attachments serve as a contract between EPA and NYS for the operation of the DWSRF program. The OA attachments provide the basic design of the program. The existing OA was signed on September 30, 1997. EPA, NYSDOH and NYSEFC should evaluate the current OA and determine what updates are required. Region 2 expects to work with NYSDOH during FFY 2013 to update the Operating Agreement.

### **B. Biennial Report**

As per 40 CFR 35.3550(n), "Biennial Report", a State must agree to complete and submit a Biennial Report that describes how it has met the goals and objectives of the previous two fiscal years as stated in the IUPs and capitalization grant agreement. The State must submit biennial reports to Region 2's Regional Administrator according to the schedule established in the capitalization grant agreement. NYSDOH has submitted its 2010-2011 biennial report on April 6, 2012 and currently has outstanding reports covering FFYs 2006-2007 and 2008-2009. NYSDOH has agreed submit a report covering FFYs 2006-2009. This report will cover four FFYs and is permissible under an agreement made with EPA Headquarters on March 12, 2011.

### **C. Funding Eligibility**

All projects funded by New York's DWSRF program during FFY 2011 were eligible to receive assistance. NYSDOH reviewed all projects during the application process in order to ensure only eligible projects were funded.

### **D. Project Benefits Reporting**

As part of the requirements introduced in FFY 2010, all projects funded under the 2011 Program are to be included in the Project Benefits Reporting (PBR) system. As of the time of the review, NYSDOH has entered all of the 2011 projects into the PBR.

### **E. Staff Capacity**

In the face of widespread economic and budgetary troubles, NYSDOH is operating at reduced staffing levels. At the same time the programmatic requirements (e.g., Buy American, Davis Bacon) under both ARRA and the Base Program have become more complex and there are additional requirements regarding audits, oversight and monitoring, adding to state-level workload. The decline in staffing and the increase in workload have the potential to result in the funding of fewer projects thereby negatively impacting continued success of the DWSRF program. However, as the ARRA program nears completion, resources should be able to be refocused on the Base program. Staffing needs should be continually evaluated as to maintain the quality of NYSDOH's DWSRF program.

### **F. Compliance with Environmental Review Requirements**

NYSDOH maintains compliance with Environmental Review Requirements with a robust Environmental Review process. All projects reviewed contained documentation that this process is followed consistently. Projects funded under the DWSRF program are subject to a NEPA-like review. These reviews are conducted using the State Environmental Review Process (SERP). NYS utilizes the State Environmental Quality Review (SEQR) process. In this process the municipality solicits itself in writing as the "lead agency." Various state agencies have the opportunity to object to this, and if there are no objections or responses within 30 days, the lead agency is affirmed.

For most DWSRF projects, NYSDOH issues a letter of no objection to the lead agency declaration. An Environmental Assessment Form (EAF) always accompanies the lead agency solicitation and this form allows the municipality and state agencies to analyze the various impacts a project may have. If there are no significant impacts, a negative declaration which is equivalent to the federal Finding of No Significant Impact (FNSI) is declared by the lead agency. If there are significant impacts, the process may continue to the Environmental Impact Statement phase. Once findings are determined, there is typically a 30 day comment period. Also, findings are published online in the Environmental News Bulletin (ENB).

## **G. Compliance with Federal Cross Cutting Authorities**

Compliance with Federal Cross-Cutters is closely linked with the SERP. The full EAF form includes an evaluation of the Federal Cross-Cutters which is used by the “Lead Agency” to determine applicability and compliance. Letters are collected as required from involved New York State and Federal agencies.

## **H. Compliance with Disadvantaged Business Enterprise Requirements**

Administrative conditions of the Award includes requirement for DOH to comply with 40 CFR, section 33.301. The condition requires DOH to comply with “six good faith efforts” whenever procuring construction equipment, services and supplies under a DOH financial assistance agreement, and to ensure that subrecipients, loan recipients and prime contractors also comply. DOH bid documents include DBE requirements. The bid documents provide DBE forms 6100-2, 3 and 4. NYSDOH fully complies with DBE requirements.

## **I. 2011 Special Requirements**

The implementation of some of the special new requirements in the ARRA capitalization grants became requirements in the base program:

### **1. Green Project Reserve (GPR) Requirement**

The 2011 grant required a minimum of 20% of the award be directed toward “green projects.” Projects needed to be documented as being consistent with the intent of GPR. GPR projects were classified into two groups, categorical and business case. Categorical projects consisted of: Green Infrastructure, energy efficiency, water efficiency, and/or environmentally innovative activities. Business case projects had to demonstrate that annual operating costs were being lowered as a result of the technology that was installed.

As of the time this report was issued, NYSDOH has not met the GPR requirement. It is expected that the financing of the Croton Water Filtration project will satisfy the requirement for FFY 2011. Additionally NYSDOH is developing template business cases for water main repair and rehabilitation projects.

### **2. Additional Subsidization Requirement**

Introduced with ARRA in 2009 was the requirement to provide project funding in the form of additional subsidization whereby the states can offer negative interest rate loans, principal forgiveness, and grants to assistance recipients experiencing economic hardship. The 2011 grant required that 30% of the award be expended as additional subsidization.

As of the time this report, New York had executed \$18,661,290 across 13 projects (30% of the 2011 grant) in additional subsidization in the form of principal forgiveness. Grants were the only kind of additional subsidization offered by NYSDOH under the 2011 DWSRF Base program.

### **3. Davis-Bacon Requirement**

The state maintains inspectors (both contracted and in-house) which check weekly wage rate interviews and certifications. The State has found that a few of the project files have inconsistencies regarding Davis Bacon compliance. These inconsistencies include incorrect language and out of date wage rates being included. All projects are required to meet the Davis-Bacon requirements which consist of Construction contract documents incorporating EPA Davis-Bacon language and the appropriate Federal wage rate.

## **VI. Financial Observations**

### **A. Binding Commitments**

NYS complies with binding commitment requirements. Cumulative binding commitments are greater than cumulative grant payments and state match. Projects that receive loan agreements typically start construction within a year.

### **B. Assistance Terms**

Terms of assistance are in compliance with SRF program requirements. Interest rates are below market rate and are near 3% for non-hardship projects. Principal repayments start within a year of project completion and proceed according to the amortization schedules provided. Federal funds are repaid within 20 years. NYSDOH has a robust additional subsidization (hardship) program in place and thus far has provided \$18,661,290 (30% of the capitalization grant) in assistance to disadvantaged communities. The assistance was provided in the form of grants.

### **C. Use of Fees**

Non Disadvantaged assistance recipients pay administration fees and maintenance fees on the loans. The administration fee is 1.1% of the total project cost and the maintenance fee is 0.11% of the outstanding principal balance. Fees are used in accordance with program requirements with funds being used for administrative purposes. For State Fiscal Year 2011, NYS collected \$1,619,111 in administration fees and \$2,136,427 in annual maintenance fees.

### **D. Assessment of Financial Capability and Loan Security**

New York State has procedures in place for assessing the technical, financial and managerial (TFM) capacity of their assistance recipients. NYSDOH both collects TFM capacity evaluation forms and conducts outreach programs including the Operator Certification Program. All assistance recipients have their taxing authority and credit evaluated by NYSEFC, thereby assuring a dedicated source of revenue for repayment. Assistance recipients always have access to additional funding in the form of “phased points” for projects that are still incomplete.

### **E. Cash Draws**

NYS correctly adheres to the “Rules of Cash Draw.” NYSEFC maintains control of the cash draw process and reviews and collects all invoices. The state has not discovered any erroneous payments. A detailed review of cash transactions has confirmed the State’s use of federal funds for eligible project and Administrative purposes.

### **F. State Match**

The state is required to contribute a match equal to 20% of the grant amount. Additionally, the state is required to provide a 1:1 match for program management set-aside funds. For the 2011 DWSRF grant of \$62,055,000, NYSDOH contributed \$12,411,000 or 20%. NYSDOH provided \$5,373,808 as a 1:1 match to the DWSRF grant. The source of this funding is New York State’s Environmental Bond Act. This state match structure has been approved by headquarters.

## G. Transaction Testing for Erroneous Payments

EPA Region 2 conducted transaction testing on two 2011 Base program cash draws. The accompanying table describes the cash draws that were examined:

Project	Project Number	Cash Draw Date	Invoiced Amount	Erroneous Payment
Amsterdam	D0-17497-70 #12	1/13/11	\$715,618.45	No
Kingston	D0-17727 #9	6/16/11	\$400,143.59	No
Monroe County Water Authority	D0-16323-70 #17	9/22/11	\$1,460,912.85	No
Coxackie	D0-17444 #15, #16	10/21/10	\$335,540.03	No
Stillwater	D0-17647 #4	9/22/11	\$911,155.04	No
EFC Admin	-	3/30/11	\$1,803,488.48	No
DOH Admin	-	3/30/11	\$1,755,967.63	No

The transaction testing process determined that the State has been reviewing and approving invoices in a proper manner. Funds are being distributed in a timely manner following requests for reimbursement.

## H. Timely and Expeditious Use of Funds

New York State uses funds in a timely and expeditious manner. The overall DWSRF fund currently has unliquidated obligations (ULOs) of \$4,994,174.77 (0.61% of total awarded funds) as of the issuance of this report. It is recommended that NYSEFC request outlays every two months which will enhance their use of funds.

## I. Compliance with Independent Audit Requirements

Annual audits are carried out each year by UHY LLP and examine the program's finances in great detail. The last audit report was finalized on March 31, 2012. An A-133 audit was conducted by KPMG on March 31, 2012. No deficiencies were found. The DWSRF program's financial elements conform to Generally Accepted Accounting Procedures (GAAP). Assistance recipients receiving more than \$500,000 in Federal funds were notified and required to submit single audit reports.

## J. Compliance with Single Audit Act Requirements

Assistance recipients that expend \$500,000 or more of Federal funds in a fiscal year are required to submit Single Audit Act Audit Reports. NYSEFC collects these reports as they become available. Additionally a Single Audit Act Audit is conducted on the State of New York. NYSDOH is required to collect these reports. The reports can be found at <http://harvester.census.gov/sac/>.

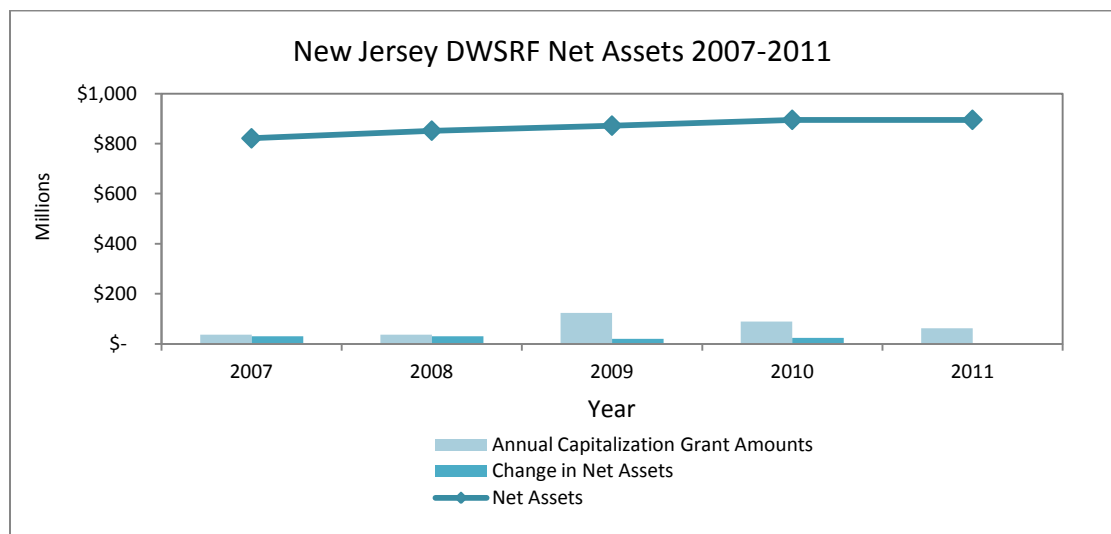
## VII. Financial Indicators

### A. Health of the Fund

Financial indicators serve to measure the sustainability and perpetuity of the DWSRF program. These indicators show that NYSDOH and NYSEFC are effectively managing partners in the DWSRF and are working to establish a fund that is sustainable and in good health. As of the time of this report New York has had no defaults and all borrowing entities have been evaluated for their financial solvency in accepting DWSRF financing. New York's funds invested in the DWSRF program earned \$13,855,250 in 2011 and \$9,967,072 in 2011.

As of June 30, 2011, New York's DWSRF program has executed a cumulative \$3,110,162,844 in loans to finance drinking water projects. NYSDOH maintains adequate controls over the loan execution and collections process. The program's receivables and cumulative collections for 2011 were equal to \$426,260,025 and \$38,671,595<sup>2</sup> respectively. Receivables increased 13% since 2010.

New York's DWSRF fund has exhibited steady growth over the past years. Net assets in 2011 were \$359,696,455. This is 13% greater than net assets as of March 31, 2010 (\$318,489,497). The chart below shows net assets over time as a line graph and the annual capitalization grant amounts and change in net assets as column graphs:



A large percentage of the growth New York attained in the years above was due to the capitalization grants and annual state match contributions. In fact, in most cases, the programs asset growth has been less than the annual capitalization grant. This indicates that the program disburses a sizable amount of assistance each year.

<sup>2</sup> Equal to Principal received from loans to borrowers plus interest received from loans to borrowers.

## B. DWSRF Financial Indicators

Financial indicators serve to gage the effective of NYSDOH and NYSEFC's management of the DWSRF program. These indicators show how close the program is coming to financing the maximum amount of assistance in a timely manner. The following table shows selected financial indicators for the New York DWSRF program for the last three Federal Fiscal Years spanning October 1 to September 30. It also shows how these numbers compare with the national average when it was last computed in 2010:

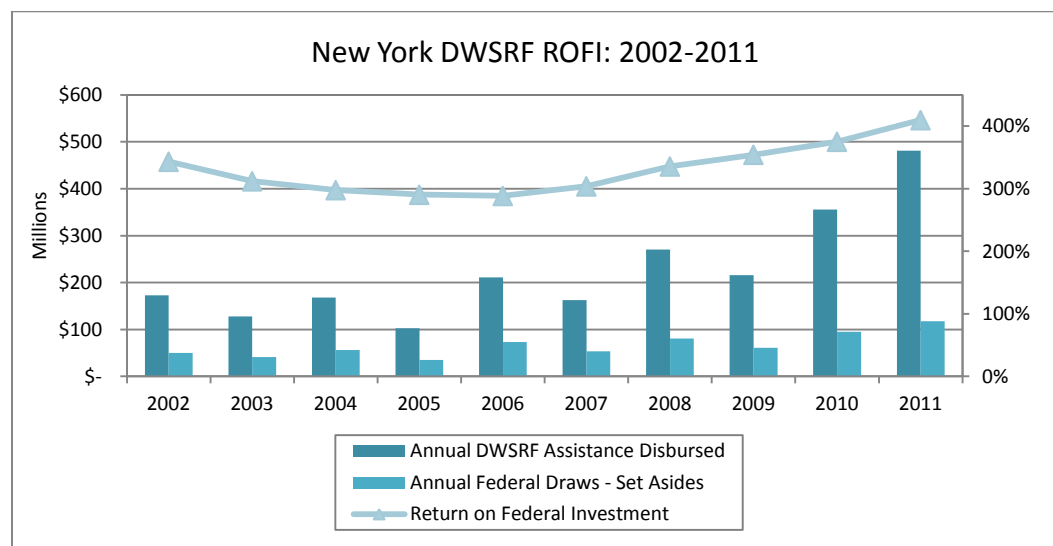
New York DWSRF Financial Indicators <sup>3</sup>				
Indicator	2009	2010	2011	2010 National Average
Program Pace (Assistance as a % of Available Funds)	101%	103%	98%	90%
Return on Federal Investment	354.4%	375.2%	409.7%	176 %
Disbursements as a % of Assistance	81.3%	83.7%	91.1%	83%
Net Return after Forgiving Principal (Excluding Subsidy)	\$155,626,649	\$179,380,487	\$170,477,036	\$20,796,139
Net Return on Contributed Capital (Excluding Subsidy)	24.3%	27.9%	24.2%	9.7%

### 1. Pace of the DWSRF Program

Pace decreased from 2010 by 5% to 98% likely due to the fact that significant amount of funds have not been disbursed at the time the NIMS data was submitted. At 98% New York has a pace that is ahead of the national average of 90%.

### 2. Return on Federal Investment (ROFI)

ROFI is the amount of assistance the state has provided for each federal dollar of capitalization grant received by the state. New York's ROFI for 2011 was 409.7% and has been on a steady increase since 2009. New York State has an aggressive leveraging program which allows them to provide more assistance per dollar of Federal Capitalization Grant. The graph below shows New York's historical ROFI performance data.



<sup>3</sup> National Information Management System (NIMS), June 30, 2011.



### **3. Disbursements as a Percentage of Assistance Provided**

This indicator describes how quickly funds are disbursed for executed loan agreements and is equal to cumulative loan disbursements divided by cumulative assistance provided. The state, at 91.1% is just below the 2010 national average for the states (99.3%). This is because at the time of the NIMS data submission the State may not have made all of its available cash draws.

### **4. Net Return after Principal Forgiveness**

This indicator represents how well the DWSRF is maintaining invested or contributed capital. It is equal to the DWSRF program's net earnings after loan principal has been forgiven. If this number is positive it means the DWSRF is accumulating funds. For the last three years, net return has remained high showing that the fund is maintaining invested capital effectively.

### **5. Net Return on Contributed Capital**

This indicator more fully describes the concept of "Net Return" as it shows the percentage of contributed capital that returns to the DWSRF funds. For 2011, New York had a net return on contributed capital of 24.2%, which exceeds the 2010 national average for all states (10.5%).

## **VIII. Set-Aside Observations**

### **A. General Set-Aside Funding**

NYSDOH is in compliance with general set-aside funding requirements. NYSDOH submits a workplan every year outlining its set-aside activities, the amounts reserved to fund them and the goals of the set-aside programs. Set aside activities must be coordinated with the overall goals of the State's public drinking water program. NYSDOH routinely creates workplans of high-quality. These workplans are submitted on-time and contain all the necessary elements. Workplan goals are coordinated with the State's public drinking water program. No changes in the activities performed have occurred thereby making amendments unnecessary.

### **B. General Account Management**

New York State maintains separate accounts for set aside funds. These accounts are subject to the same level of oversight as the larger DWSRF fund. NYSDOH is in full compliance with this program element.

### **C. Specific Set-Aside Requirements**

NYSDOH accounts for and complies with the uses of set-aside funding for the DWSRF program. NYSDOH documents its activities in the set-aside activity reports. These correspond to the set-aside workplans that are submitted each year. Equipment and salaries are proportionately funded. The 1:1 state match for the PWSS program is made each year and is funded through in-kind services.

## IX. Project File Review

As per the final FFY 2012 SRF Procedures and Attachments, the Regions are required to conduct one onsite review each FFY. During these reviews, two Base program project files are to be reviewed. The following table contains project information for the two projects that were examined during this onsite review:

Project Name	Project Number	Total SRF Assistance	Principal Forgiveness Amount	GPR Amount
Bedford (T)	117463	\$15,314,433	\$0	\$0
Kiryas Joel (V)	16906	\$27,912,800	\$0	\$0

NYSDOH has exhibited good file management and organization. The digitization of contract documents and materials has been most helpful. EPA Region 2 acknowledges the work and effort expended on the part of NYSDOH to present their project files in a way that is conducive to a smooth project file review process. The following summarizes issues encountered during the project file review process:

### A. Funding Eligibility

Both project files contained applications submitted by the assistance recipients. The projects reviewed were both eligible for funding under the DWSRF 2011 program:

- Bedford (T): This project consists of the construction of a 14,000 ft<sup>2</sup> water microfiltration plant building and the construction of a 12 inch ductile iron pipe water transmission line from the filtration building to the existing distribution system in Katonah, NY.*
- Kiryas Joel (V): Due to a limited groundwater supply for the existing village, Kiryas Joel will be connecting to the Catskill Aqueduct as it passes through the town of New Windsor, NY. The Village will be constructing a 13-mile long pipeline, pumping facilities, and treatment facilities in order to bring the water from the existing aqueduct to the existing transmission system in the Village of Kiryas Joel.*

As of the time of this report, Bedford had submitted plans and specifications to NYSDOH and was approved as of April 30, 2010. Kiryas Joel has not yet submitted plans to NYSDOH. The project has undergone a protracted environmental review.

### B. Green Project Reserve (GPR)

Neither of the projects reviewed contained green project reserve elements.

## **C. Socio-Economic and Other Cross Cutters**

Both project files contained EPA form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance". All project files reviewed contained Equal Employment Opportunity certification. Kiryas Joel contained a "Minority and Women's Business-Equal Opportunity Program Workplan" and Bedford contained an item in the specification, "General Provisions of Laws Governing Workers on Article 8 Public Contracts." This section of the specification also contained a provision against the use of federally debarred or suspended contractors.

## **D. State Environmental Review**

The reviewed projects were both subject to SERP requirements. Both projects had "lead agencies" that coordinated the environmental review process. Bedford was required to submit a full EAF form. Kiryas Joel was required to submit a Final Environmental Impact Statement (FEIS). Both the full EAF and the FEIS documented the mitigation measures employed and described alternative projects. Both projects received negative declarations. The state followed all public notification procedures. The findings on each project were published in the Environmental News Bulletin, and the FEIS was distributed to all interested parties. NYSDOH fully complied with state environmental review procedures.

## **E. Environmental Cross-Cutters**

The interaction between projects and environmental cross-cutters is evaluated through the full EAF form used by NYSDOH. None of the projects reviewed had a significant impact on historic or tribal properties although the Kyrias Joel project required 1-A and 1-B archaeological studies. All project files contained letters from the New York State Office of Parks and Recreation and Historic Places (OPRHP) documenting no negative effects. Bedford had a letter from the Fish and Wildlife department but they were not required as the projects had no impact on fish and wildlife. Many of the other letters (e.g. State Coastal Zone Management Agency) were not included in the project file because they were completely irrelevant to the project.

## **F. Bid, Procurement and Construction Contracts**

Construction contracts and bid information were only available for the Bedford project. Bedford's project file contained all required documentation of the bid process. The file contained a copy of the approved specifications approved by NYSDOH and dated April 30, 2010. The specifications contained all required socio-economic cross cutter requirements. The specification did not contain Davis Bacon wage language.

## **G. Reporting and Ongoing Compliance**

Both files include semi-annual Disadvantaged Business Reporting form 5700-52A which are kept on file and submitted by NYSEFC. Neither file contains any evidence that Davis-Bacon compliance has been checked for each weekly payroll. None of the project files contained Federal Funds Accountability and Transparency Act (FFATA) reporting though NYSDOH will be using other projects to satisfy this requirement. It should be noted that as construction commences, all of projects should come into compliance with EPA requirements.

## **H. State Inspections**

Both projects have not been inspected yet as there has been no initiation of construction activities as of the time of the review. If these projects are again reviewed, inspection reports will be on file.

## **I. Financial Review**

All projects reviewed were subject to a technical, financial and managerial capability evaluation by NYSDOH. A "Capacity Development Form" is submitted for each project. NYSEFC also conducted a credit worthiness evaluation on each of the borrowers.

## **J. Loan or Bond Purchase Agreement**

Both project files included executed project financing agreements. Both agreements contained "Exhibit C" a budget detailing "Estimate Budget Costs." Both project financing agreements included interest and fee rates. Both PFAs included an amortization schedule and a description of the repayment structure of the agreement. Both loan agreements contained the requirement for the assistance recipient to submit Single Audit Act audit reports if they expend over \$500,000 during FFY 2011. Also present in both agreements was the requirement to follow Generally Accepted Accounting Procedures (GAAP).

## **K. Single Audit Act Compliance**

Assistance recipients should be submitting Single Audit Reports if they receive more than \$500,000 in Federal funds from all sources that FFY. Of the two projects reviewed, no Single Audit Reports have been received as of the time of this report.

## **X. Required Actions**

The following actions must be taken by NYSDOH in order to assure full compliance with the requirements of the DWSRF program:

- During FFY 2013 NYSDOH should expect to work with EPA Region 2 to update their Operating Agreement.
- NYSDOH must submit biennial reports for FFYs 2006-2009.
- Staffing needs should be continually evaluated as to maintain the quality of New York State's DWSRF program.
- NYSDOH must examine FFY 2011 project files for Davis Bacon compliance.
- NYSDOH must collect all required Single Audit Act reports. This can be accomplished through using the <http://harvester.census.gov/sac/> webpage.

## **XI. Conclusion**

NYS is committed to ensuring the financial stability of its Base DWSRF program. Program personnel, from both the NYSDOH and the NYSEFC, are focused on protecting public health by implementing the DWSRF program in an effective manner. NY-DWSRF program is in sound health, well managed, and responsive to new initiatives. EPA appreciates both the NYSDOH's and NYSEFC's collaborative effort, working with EPA as partners. We commend NYS for the continued operation of a successful DWSRF program. However, the decline in staffing and the increase in workload have the potential to result in the funding of fewer projects thereby negatively impacting the continued success of New York State's DWSRF program.

## XII. NYSDOH Comments

Nirav R. Shah, M.D., M.P.H.  
Commissioner

**NEW YORK**  
*state department of*  
**HEALTH**

Sue Kelly  
Executive Deputy Commissioner

November 27, 2012

Daniel D'Agostino  
EPA Region 2 State Revolving Fund Team  
290 Broadway 24th Floor  
New York, NY 10007

Re: Comments on the EPA Region II  
FFY 2011 ARRA & Base Program  
Program Evaluation Reports of the New  
York State Drinking Water State Revolving  
Fund Program

The New York State Department of Health Bureau of Water Supply Protection has reviewed the above referenced reports and we are pleased overall with how well those reports reflect upon New York's Drinking Water State Revolving Fund (DWSRF) program. We have no additional comments beyond those discussed during the development of the reports and that were addressed by the EPA where appropriate.

We do however have several broader programmatic comments that we would like incorporated into the final report and they are as follows:

Several federal requirements that continued after ARRA have had the unintended consequences of adding to our programs workload, increased the costs of funded projects, and may not be in the best interest of the program or the sub-recipients. One example is the added requirement of the Davis Bacon Prevailing Wage Act in states that already have prevailing wage laws. During the initial 12 years of the program (1997-2009) we required that the NYS Prevailing wage laws be met. After ARRA in 2009 the Davis Bacon Act requirements were added as a federal requirement to the base program. This means that projects now need to incorporate both the federal and the state prevailing wage schedules and adhere to all of the underlying requirements of both. This not only adds to our workload but it also adds unnecessary expense to the projects with no measurable benefit to the sub-recipients, the construction contractors, or their employees. This requirement makes the DWSRF program less attractive to some potential sub-recipients and in some cases they will choose to seek private financing instead of coming through the DWSRF in order to avoid what amounts to significant additional book keeping.

Another example is the requirement of a specific amount of additional subsidy thereby taking the state's flexibility away with respect to ensuring the program's perpetuity and that any additional subsidy is only provided to disadvantaged communities. We are pleased that some relief has come in that the required 30% additional subsidy has been reduced down to 20%. However, we would encourage EPA to continue efforts to eliminate this as a requirement all together and bring it back to what it was pre-2009 in that it was the States' option to provide additional subsidy.

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We also understand that there has been some discussion on adding "Buy American" requirements to the base program. We would strongly discourage this given the significant increase in work load to track material origins, its adding to the cost of projects overall through increased material costs, and increased soft costs associated with the sub-recipients having to track this.

While we understand that the EPA may have little discretion regarding some of the additional program requirements, we would recommend that the EPA continue to support the states by working to minimize any future additional requirements being added to this already very successful program.

On a more positive note, one recently added requirement that appears to be beneficial is reporting through the Project Benefit Reporting (PBR) System. We used this reporting tool for the first time this year to upload the EPA DWSRF NIMS data and found that it will likely enhance our capability to get the annual NIMS reports completed much more timely. It also allows us to run our own reports to see how we are doing towards additional subsidy requirements as well as several other useful project reports. We would like to commend the EPA for the implementation of this reporting tool and the Northbridge Environmental Management Consultants who have been very responsive to our needs when we have reached out to them on PBR issues.

In closing, the New York State Department of Health appreciates the ongoing professionalism of the EPA's Region II staff along with their continued commitment to keep our department engaged with respect to all facets of the DWSRF program including with the development of these PER reports. Our Department and EFC will continue to work with the same unwavering spirit of cooperation that the EPA Region II staff has exhibited since the inception of the DWSRF program to the public health benefit of many New York State residents.

Thank you for this opportunity and we look forward to your next on-site visit in April.

Sincerely,



Michael J. Montysko, P.E.  
Design Section Chief  
Bureau of Water Supply Protection  
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Corning Tower Rm. 1135  
Albany, NY 12237  
p. 518-402-7676

cc: via email

Mr. Vida/Ms. Thompson-USEPA  
Mr. Sokol/Mr. Jackson- NYSDOH  
Mr. Levine/Ms. Boyd/Mr. Bradley/Mr. Bums-NYSEFC

## Attachment A: EPA Project Benefits reporting – Data for FFY 2011 Green Project Reserve and Additional Subsidization

### Drinking Water SRF Reporting Additional Subsidy or GPR for New York - 2011 Cap Grant

Report Generated: 11/13/2012 -- Data Last Modified: 11/9/2012 5:47:00 PM

Tracking Number	Recipient	Initial Loan Date	Amount	Grant Amount	Negative Interest Amount	Principal Forgiveness Amount	Recipient Could Afford Project without Subsidy?	Population Served	GPR Amount
15003	Ellenville (V)	9/27/2012	7,300,000	2,000,000	0	0	<input type="checkbox"/>	4,135	0
15603	Hounsfield (T)	3/8/2012	4,800,000	2,000,000	0	0	<input type="checkbox"/>	345	0
16278	Long Lake (T)	9/27/2012	3,767,993	2,000,000	0	0	<input type="checkbox"/>	800	0
16692	Stark (T)	11/10/2011	2,098,150	1,585,913	0	0	<input type="checkbox"/>	500	0
16744	Fleishmans (V)	7/21/2011	3,227,510	1,671,689	0	0	<input type="checkbox"/>	620	0
17367	Troupsbug (V)	6/28/2012	183,000	183,000	0	0	<input type="checkbox"/>	250	0
17369	Livingston County Water Authority	2/3/2011	1,279,700	327,950	0	0	<input type="checkbox"/>	350	0
17372	Mexico (T)	2/2/2012	7,035,000	1,652,834	0	0	<input type="checkbox"/>	800	0
17611	Saranac Lake (V)	10/6/2011	12,490,000	2,000,000	0	0	<input type="checkbox"/>	8,000	0
17682	Moniah (T)	1/19/2012	1,239,904	1,239,904	0	0	<input type="checkbox"/>	78	0
17851	NYCMTWFA	6/17/2011	190,474,711	0	0	0	<input type="checkbox"/>	1,000,000	190,474,711
17928	Castle (T)	5/31/2012	5,106,267	2,000,000	0	0	<input type="checkbox"/>	1,135	0
18005	Savannah (T)	11/10/2011	3,500,000	2,000,000	0	0	<input type="checkbox"/>	900	0
<b>Total for all 13 Agreements</b>			<b>242,502,235</b>	<b>18,661,290</b>	<b>0</b>	<b>0</b>		<b>1,017,913</b>	<b>190,474,711</b>